

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HB45NT-66964

Anna Ceylan,)	
)	<u>Administrative Action</u>
Complainant,)	
)	FINDING OF PROBABLE CAUSE
v.)	
)	
Dall H. Cho & Seung J. Cho & KayMax)	
Realty, Inc.,)	
)	
Respondents)	

This is a housing discrimination case. On May 10, 2018, New Jersey resident Ana Ceylan (Complainant), filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that in or around March 2018, landlords Dall H. Cho and his wife Seung J. Cho (the Chos or Respondents) and the Chos' real estate agency, KayMax Realty, Inc. (KayMax or Respondent) refused to rent her and her husband an available apartment because they were not of Korean origin in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. DCR's ensuing investigation found as follows.

Summary of Investigation

The Chos own a duplex townhouse in Palisades Park. They originally resided in unit A and used unit B as a rental property.

Complainant told DCR that she and her husband wanted to move from New York City to New Jersey and were in search of a four-bedroom apartment. Complainant said that on February 17, 2018 they saw unit B (which at the time included a basement) advertised for rent on the website zillow.com for \$4,475 per month. Complainant said she called the listed realtor, Gina Seo from KayMax. According to Complainant, Seo said she was too busy to talk and would get back to her. Complainant said Seo never called back so she called another agent, [REDACTED] from Prominent Properties SIR. Complainant said [REDACTED] showed her and her husband the apartment and they "fell in love with it." Complainant said that [REDACTED] later told her that Seo said the Chos would not rent to them because they were not Korean.

On or about February 28, 2018, Complainant sought assistance from the Fair Housing Council of Northern New Jersey (FHCNNJ). The FHCNNJ conducted some telephone testing which showed that as of March 2, 2018, the basement was no longer included as part of unit B and the rent had been adjusted to \$3,475 per month for unit B without the basement. As of March 6, 2018, the unit was no longer available. The FHCNNJ referred the matter to the U.S. Department of Housing and Urban Development (HUD) per their Fair Housing Initiatives

Program (FHIP) agreement and HUD then referred the matter to DCR per the terms of our Fair Housing Assistance Program (FHAP) agreement.

Keun Joo, Broker of Record, answered the complaint on behalf of KayMax. Joo stated in part:

...The subject property is a two-family duplex building. The owners reside in Unit A and they rent out Unit B. The fact that the owners did not discriminate against anyone from different national origin is proven by the fact that their previous tenant, [REDACTED] was not Korean. [REDACTED] Lease period was from May 1, 2017 to April 30, 2018. However, a most unfortunate event took place with the previous tenant that traumatized the owners which made them realize the whole experience could have been perhaps less traumatic had they been able to freely communicate with the tenant in the language they are proficient in which is Korean. During the lease period, a member of [REDACTED] [sic] was involved in manslaughter and became a fugitive of the law.¹ One day police forces swarmed the rental property and broke through the front door looking for the fugitive. Needless to say, this resulted in a trauma to the owner and damage to the property. Additionally, as a result of dealing with the legal issues surrounding her family member, [REDACTED] decided to break the terms of the Lease and move out early which resulted in financial loss to the owners.

In summary, the Owners only wished to find a tenant who spoke their mother tongue which is Korean rather than discriminate against anyone and at the same time had the right to benefit from the reasonable provision of exception made within the law.

In their Answer to the complaint, the Chos did not admit or deny the allegations. They did state in part:

We are sorry for all that happened and also very sorry to what caused to Ms. Anna Ceylan [sic] such humiliation, pain and suffering.

During an interview with the DCR Investigator, who was assisted by a translator, Seung J. Cho said that she did tell Seo that she would feel more comfortable renting to someone who

¹ Multiple news sources including NJ.com reported that a search warrant was executed at the property in connection with a search for Olvy Torres, who surrendered to authorities on October 9, 2017. Torres was charged with manslaughter following a September 26, 2017 hit and run in which his SUV jumped a curb and killed a woman who was sitting at a bus stop. The NJ.com article noted that the apartment appeared to have been ransacked before investigators arrived and security video showed what appeared to be Torres loading duffel bags into a car and leaving the apartment. [REDACTED] who was associated with Torres, surrendered to authorities on November 8, 2017 after a search of a safety deposit box she maintained resulted in the seizure of \$75,000 and two diamond rings.

spoke her language, but denied telling her that she would not rent to someone who was not Korean.

The Chos gave DCR copies of two lease agreements, one for the main floors of unit B and one for the basement, which was rented as a separate one-bedroom apartment. A review of the agreements showed that on February 26, 2018, the Chos entered into a lease with [REDACTED] to rent the basement apartment for \$1,500 per month. On March 23, 2018, the Chos rented the main floors of Unit B to [REDACTED] and [REDACTED] for \$3,250 per month.

Analysis

At the conclusion of an investigation, DCR is required to determine whether probable cause exists to credit a complainant's allegations in the verified complaint. See N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] was violated." Ibid. If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. See N.J.A.C. 13:4-11.1(b). If DCR finds that there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. See N.J.A.C. 13:4-10.2(e).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful to "refuse to sell, rent, lease, assign, sublease or otherwise to deny to or withhold from any person or group of persons any real property or portion thereof," or to discriminate in the "terms, conditions, or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith" on the basis of nationality or national origin. See N.J.S.A. 10:5-12(g).

The LAD does not apply to the rental of a single apartment in a two-family dwelling where the owner resides in the one other unit. See N.J.S.A. 10:5-5(n)(1). Here, it is arguable that this exception did not apply because the Chos split the rental unit into two separate units and rented the main floors of unit B to [REDACTED] and [REDACTED] for \$3,250 per month, and the basement apartment to [REDACTED] for \$1,500 per month, thus resulting in three total units in the home.

However, even if the "two-family, owner-occupied" exception did apply at the time Complainant was told she could not rent the apartment, precluding a claim for refusal to rent on the basis of national origin, Respondents were nonetheless prohibited from making discriminatory utterances to prospective tenants. Ibid. The LAD prohibits the making of a

discriminatory statement or expression of preference as to national origin in connection with a prospective rental, and this provision explicitly applies to two-family dwellings in which the owner resides in one of the units. See N.J.S.A. 10:5-12(g)(3); N.J.A.C. 13:9-1.1(b)(1).

Here, the investigation produced evidence of discriminatory statements made by both Respondents indicating a preference to rent the subject unit to tenants who were either Korean or spoke Korean. [REDACTED] from Prominent Properties SIR stated that the listed realtor, Gina Seo from KayMax, told her that the Chos would not rent to Complainant because she was not Korean. In addition, the Answer to the Verified Complaint from KayMax Realty summarized that “the Owners only wished to find a tenant who spoke their mother tongue.” And during a DCR interview, Respondent Seung J. Cho admitted that she told her real estate agent that she would feel more comfortable renting to a Korean-speaker.

The LAD prohibits statements that express a preference based on an LAD-protected characteristic. This includes a preference based on national origin. This provision applies to properties that would otherwise qualify for an exemption, which, as discussed above, it is not clear this property otherwise would. Since there is evidence that both Respondents made discriminatory statements indicating the rental was exclusive to prospective tenants who were Korean or spoke Korean, there is probable cause to believe they violated the LAD.

Therefore, the investigation determines that the facts and circumstances indicate a FINDING OF PROBABLE CAUSE that the LAD has been violated and the complaint will proceed to a hearing on the merits.

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rachel Wainer Apter, Director
NJ DIVISION ON CIVIL RIGHTS

DATE: March 14, 2019